

- 1. Introduction.** A "permit by rule" or "PBR", when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in this chapter may proceed under the PBR process. A PBR activity will not significantly affect the environment if carried out in accordance with this chapter, and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the Natural Resources Protection Act (NRPA) permit requirement and Water Quality Certification requirement.

If a proposed activity is not described in this chapter, or will not be conducted in accordance with the standards of this chapter, the applicant must obtain an individual permit prior to beginning the activity.

- A. Location of activity.** The location of an activity may affect whether an activity qualifies for PBR, and whether review by the Department of Inland Fisheries and Wildlife is required.

- (1) Type of resource. For some types of activities, the availability of a PBR is affected by the type of natural resource in or adjacent to which the activity is proposed. For example, an applicant proposing an activity consisting of "Movement of rocks or vegetation" may receive a PBR only if the activity will take place in a great pond, river, stream or brook. Limitations concerning the location of activities are addressed in the "Applicability" provision in each section of this chapter.
- (2) Essential habitat. Essential habitats include areas critical to the survival of threatened and endangered species such as the bald eagle, least tern, roseate tern, and piping plover. If the activity is located in essential habitat, such as near an eagle nesting site, a PBR is only available if the applicant obtains written approval from the Department of Inland Fisheries and Wildlife (IF&W). This approval from IF&W must be submitted to the DEP with the PBR notification form, and the applicant must follow any conditions stated in the IF&W approval.

NOTE: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (for unorganized territories) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a "certification of review and approval".

- B. Notification.** The applicant must file notice of the activity with the DEP prior to beginning work on the activity. The notification must be on a form provided by the DEP and must include any submissions required in this chapter. The applicant must keep a copy to serve as the permit.

The notification form must be sent to the DEP by certified mail (return receipt requested), or hand delivered to the DEP and date stamped by the department.

- C. Effective period**

- (1) Beginning of period. The PBR becomes effective 14 calendar days after the DEP receives the notification form, unless the DEP approves or denies the PBR prior to that date. If the DEP

does not speak with or write to the applicant within this 14 day period regarding the PBR notification, the applicant may proceed to carry out the activity.

There are three exceptions regarding the effective date of an approved PBR:

- (a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the 14 day waiting period.
- (b) Activities listed in Section 2 (Soil disturbance) and Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 14 day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.
- (c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management Acts may not proceed until any required permit under those laws is obtained.

NOTE: Activities that are part of a larger project may require other permits from the DEP also. These other laws may prohibit the start of construction of any part of the project unless a permit under that law is obtained. In these cases, while not a violation of this rule, starting work on a PBR approved activity would be a violation of those other applicable laws.

- (2) End of period. The PBR is generally effective for 2 years from the date of approval, except that a PBR for "Replacement of structures" under Section 4 is effective for 3 years.

NOTE: Activities that qualify under this chapter may need to meet other local, state and federal requirements. Examples -- (1) If an activity extends below the low water line of a lake, coastal wetland or international boundary water, the applicant should contact the Bureau of Parks and Lands (287-3061) concerning possible lease or easement requirements, or (2) If an activity will involve work below the mean high water line in navigable waters of the United States, the applicant should contact the Army Corps of Engineers (623-8367).

D. Discretionary authority. Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of the NRPA (38 M.R.S.A. Section 480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

If an individual permit is required pursuant to this subsection, the DEP shall notify the applicant in writing within the 14 calendar day waiting period described in sub-section (C) above. When the DEP notifies an applicant that an individual permit is required, no work may be conducted unless and until the individual permit is obtained.

E. Violations. A violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP, or acts contrary to the provisions of a permit. The person, his or her agent, or both, may be held responsible for the violation. Commonly, the "person" is the landowner, and the "agent" is the contractor carrying out the activity. A violation occurs when:

- (1) An activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by the DEP;
- (2) An activity occurs that is allowed under PBR, but a PBR for the activity has not become effective prior to the beginning of the activity; or
- (3) An activity occurs that is allowed under PBR and a PBR for the activity is in effect, but the standards specified in this chapter are not met.

See the "applicability" provision under each activity for rules concerning what activities are allowed under PBR. A PBR is only valid for the person listed on the notification form, or for his or her agent.

Each day that a violation occurs or continues is considered a separate offense. Violations are subject to criminal penalties and civil penalties of not less than \$100 nor more than \$10,000 for each day of that violation (38 M.R.S.A. Section 349).

NOTE: A local Code Enforcement Officer (CEO) may take enforcement action for a violation of the Natural Resources Protection Act if he or she is authorized to represent a municipality in District Court, and he or she has been certified as familiar with court procedures, 30-A M.R.S.A. Section 4452(7).

2. Soil disturbance

A. Applicability

- (1) This section applies to an activity involving soil disturbance or fill placement adjacent to, but not in:
 - (a) A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
 - (b) Freshwater wetlands consisting of or containing:
 - (i) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - (ii) Peatlands dominated by shrubs, sedges and sphagnum moss.

NOTE: The Natural Resources Protection Act ("NRPA") regulates activities adjacent to the protected natural resources only if operated in such a manner that material or soil may be washed into them. If existing barriers (i.e. ice berms, retaining walls) or site conditions (i.e. negative slope) are such that material or soil could not wash into the resource, then the activity is not regulated under the NRPA. The use of silt fence and hay bale barriers does not change the law's applicability to an activity.

- (2) This section does not apply to an activity where sustained slopes are steeper than 3 horizontal feet: 1 vertical foot (approximately 33% slope) between the normal high water line or upland edge of the protected resource and the soil disturbance.
- (3) Activities that qualify for permit by rule under another section are not required to comply with this section unless expressly stated in that section.
- (4) A soil disturbance activity performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14 day waiting period required in Section 1(C)(1).
- (5) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (6) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements. In most shoreland areas, a 75 or 100 foot undisturbed buffer strip is required between the disturbed areas and the water or wetland.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) A 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. Existing vegetation within the setback zone may not be disturbed. Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback.
- (2) The setback requirement does not apply to:
 - (a) The planting of vegetation for the purpose of controlling erosion;
 - (b) The removal or replacement of underground storage tanks when performed in accordance with 38 M.R.S.A. Section 566-A;
 - (c) The placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure. Any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 25 foot setback standard; or
 - (d) The closure of a landfill in conformance with the DEP's solid waste management rules.
- (3) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the 25 foot buffer and the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the 25 foot buffer to the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (2) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (3) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.
- (4) Upland edge. The boundary between upland and wetland.

NOTES:

- (1) Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to 22 M.R.S.A. Section 42(3).
 - (2) The placement of wastewater treatment facilities or disposal systems by people in possession of an overboard discharge license or conditional discharge permit is exempt from the NRPA, subject to certain conditions (see Chapter 596 of DEP Regulations "Overboard Discharges: Licensing, Relicensing, Transfer and Abandonment of Licenses").
-

3. Intake pipes & water monitoring devices

A. Applicability

- (1) This section applies to the installation or maintenance of a permanent water intake pipe which will not significantly affect the water level or flow of waters within a coastal wetland, freshwater wetland, great pond, river, stream or brook. This section also applies to the installation of a well in or adjacent to a freshwater wetland or adjacent to a great pond, coastal wetland, river, stream or brook. Allowed uses of water for the purposes of this section include a water supply for a single family residence and a dry hydrant.
- (2) This section also applies to the installation or maintenance of a permanent device used to monitor water elevations, flow or quality including a gauging station, staff gauge, tide gauge, water recording device, water quality testing and improvement device or other similar scientific equipment within a coastal wetland, freshwater wetland great pond, river, stream or brook.
- (3) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (4) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from permit requirements under 38 M.R.S.A. Section 480-Q provided that the:
 - (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.
- (3) A permit may be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody;

- (b) Any activity in coastal waterways; or
- (c) Any activity within a river, stream or brook that takes place between October 2 and July 14.

A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (2) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March, 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be replaced or reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed areas.
- (4) The trench width in any protected natural resource must be no wider than necessary to install the device.
- (5) Any trench in or adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) The water intake structure may not interfere with any potential boat usage and may not block fish passage.
- (7) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (8) Excavation of a pool to increase depth is prohibited under this section.
- (9) Maintenance clearing of deposited debris and sediments from the intake area is allowed provided the cleared materials are removed from the resource and are disposed of in an upland location at least 25 feet from any open water body and stabilized to prevent erosion. Disposal of any dredged material or debris must be carried out in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 et seq. Clearing or removal of sediment from a water body for other purposes is not allowed under this section.
- (10) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
 - (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
 - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.

- (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (11) Wheeled or tracked equipment may not be operated in the water. Equipment operating on the shore may reach into the water with a bucket, or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (12) Wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (13) Work below the high water line of a great pond, river, stream or brook must be done at low water, except as required for emergency flood control work. Measures such as a silt boom or staked fencing must be employed to reduce and isolate turbidity.
- (14) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (15) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Lumber treated with pentachlorophenol or creosote may not be used where the wood will come in contact with water.
- (16) Blasting in inundated areas is prohibited.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (2) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

4. Replacement of structures

A. Applicability

- (1) This section applies to the replacement of an existing permanent structure in, on, or over a coastal wetland, freshwater wetland, great pond, fragile mountain area, or river, stream or brook. Any activity involving structure replacement adjacent to protected natural resources must conform with Section 2 "Soil disturbance". Some activities involving maintenance and repair of a permanent structure may not require a permit (see note 2 at the end of this section).
- (2) In order to be eligible for this section, the structure must have been in place and functioning as intended within 24 months of the DEP's receipt of the notification form. A permit by rule for replacement is valid for three years from the date of approval.
- (3) This section does not apply to structures located within a sand dune system. (See Section 16: Activities in coastal dune systems.)
- (4) This section does not apply to the replacement of a dam or a tidal flood gate.
- (5) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (6) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (2) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) A replaced structure that is located in, on, or over a protected natural resource may not exceed the dimensions of the previously existing structure, and may not extend any further into the water body or wetland, except that retaining walls may be reinforced with a facing material not exceeding 6 inch in width or may be replaced with riprap in accordance with Section 8 "Shoreline stabilization".

NOTE: Vegetation is the preferred method of erosion control near water bodies. Where the use of vegetation is not feasible, riprap is preferred over retaining walls because it dissipates wave action and is a more stable structure over the long term. The DEP encourages the replacement of retaining walls with riprap, unless the presence of large trees or structures makes its use impractical.

- (2) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the protected resources:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (3) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (4) Non-native wetland plants may not be planted in disturbed areas.
- (5) Work done in a river, stream or brook must allow for fish passage and the maintenance of normal stream flows at all times of year and may not impound water.

- (6) No dredging may take place during the activity and no material may be removed from the affected natural resource except that rocks that were part of the original structure may be removed or reused.
- (7) Work below the high water line of a great pond, river, stream or brook must be done at low water, except as required for emergency flood control work. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (8) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (9) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
 - (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
 - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
 - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (10) Wheeled or tracked equipment may not be operated in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (11) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (12) All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales, silt fence or mulch must be used, where necessary, to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.
- (13) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.

- (14) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.
- (15) The replaced structure may not interfere with, or reduce the opportunity for, existing navigational and recreational uses of the site.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Dam. Any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (2) Dredge. To move or remove, by digging scooping or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (3) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (4) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (5) Public works project. A federal, state or local government, or state-regulated utility project for public use or service including, but not limited to, highways, dams, bridges, utility lines, water lines, sewerage, and recreational facilities such as boat launch facilities.
- (6) Replacement. Any activity that results in more than 50% of a structure being restored or reconstructed whether above or below the normal high water line.
- (7) Retaining wall. A vertical or near vertical structure generally constructed of wood, concrete or rock or a combination of these materials and located at or below the normal high water line.
- (8) Riprap. Heavy, irregular-shaped rocks that are fit into place, usually without mortar, on a slope.
- (9) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.

- (10) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

NOTES:

- (1) Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services under 22 M.R.S.A. Section 42, subsection 3.
- (2) Section 480-Q(2) of the NRPA exempts from permitting the maintenance and minor repair of structures in, on, over or adjacent to a protected natural resource and maintenance and minor repair of private crossings of a river, stream or brook provided:
- (a) Erosion control measures are taken to prevent sedimentation of the water;
 - (b) The crossing does not block fish passage in the water course;
 - (c) There is not additional intrusion into the protected natural resources; and
 - (d) The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair.

Section 480-Q(2) does not apply to the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality.

- (3) Section 480-Q(2-B) of the NRPA exempts from permitting the replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced.
- (4) Section 480-Q(9) of the NRPA exempts from permitting emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does to apply to any activity on an outstanding river segment as listed in section 480-P.
-

5. REPEALED**6. Movement of rocks or vegetation****A. Applicability**

- (1) This section applies to the limited movement of rocks or removal of vegetation from below the normal high water line of a great pond or river, stream or brook in order to provide access for swimming or navigation.
- (2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) The width of the area to be cleared may not exceed 10 feet, as measured parallel to the shore. Only one area may be cleared per lot with shore frontage or area under common ownership with shore frontage.
- (2) If the area has been cleared in the past, subsequent clearing must be limited to the same area.
- (3) Rocks moved from the cleared area must remain in the water and must be distributed randomly in such a way that a structure such as a jetty or boat ramp will not be formed. Rocks may not be removed from the water.
- (4) Wheeled or tracked equipment may not be operated in the water. For large rock movement, equipment operating on the shore may reach into the water with a bucket or similar extension

provided no bottom sediments are removed or displaced. Any soil disturbance on the land must be stabilized with seed or mulch.

- (5) Rocks that are holding the shoreline may not be moved if that action would result in destabilization of the shoreline or soil erosion.
- (6) Cut or uprooted vegetation must be removed from the water.
- (7) Work must be done during periods of low water level or flow.

7. Outfall pipes

A. Applicability

- (1) This section applies to the installation and maintenance of a permanent outfall pipe, an outlet from a ditch or drain tile for storm water, ground water or other discharges licensed by the DEP in or on land adjacent to a coastal wetland, freshwater wetland, great pond, river, stream or brook.

NOTES:

- (1) A wastewater discharge license from the DEP is required for any discharge from an the outlet other than stormwater from residential development; small commercial or industrial facilities; or uncontaminated groundwater.
- (2) A permit may be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody;
 - (b) Any activity in coastal waterways; or
 - (c) Any activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

-
- (2) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
 - (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

- (1) For an activity occurring in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.

- (2) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from the disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the edge of the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation control consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) Stormwater outfalls, whether a pipe or trench, must utilize velocity reducing structures and/or rock aprons to prevent erosion. A vegetative filter strip of at least 25 feet long must be established and maintained between the outfall structure and the resource unless a different standard is required pursuant to the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, or the Storm Water Management Law, 38 M.R.S.A. Section 420-D.
- (3) Foundation drains and licensed discharges may extend to, and outfall in, the resource. If necessary, a rock apron must be constructed to prevent erosion.
- (4) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (5) Non-native wetland plants may not be planted in disturbed areas.

- (6) The trench width in any protected natural resource must be no wider than necessary to install the device.
- (7) The trench in and adjacent to the protected natural resource must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (8) Blasting in inundated areas is prohibited.
- (9) The outfall structure may not interfere with any potential boat usage of the project site.
- (10) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (11) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (12) Work below the high water line of a great pond, river, stream or brook must be done at low water except as required for emergency flood control work. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (13) Maintenance clearing of deposited debris and sediments from the outfall area is allowed provided the cleared materials are removed from the resource. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.
- (14) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (15) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
 - (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.

- (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
 - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (16) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Diversion. A rerouting of a river, stream or brook to a location outside of its established channel.
- (2) Dredge. To move or remove, by digging, scooping, or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (3) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (4) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (5) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites Communis*) and purple loosestrife (*Lythrum salicaria*).

8. Shoreline stabilization

A. Applicability

- (1) This section applies to the establishment of vegetation and the installation of riprap along the shoreline of a coastal wetland, great pond, freshwater wetland with over 20,000 square feet of open water, river, stream or brook. This rule limits riprap in coastal wetland areas to that required to protect a structure within 100 feet of an eroding bank or agricultural land.
- (2) This section applies only to areas where erosion exists and vegetation is not present, as demonstrated by photographs submitted with the notification form.
- (3) This section does not apply to areas within or adjacent to a coastal wetland containing soft bottom (mudflat) sediments or salt marsh vegetation.
- (4) This section does not apply to areas within any portion of a coastal sand dune system even if portions of these systems extend into the coastal wetland.
- (5) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) A permit may be required from the US Army Corps of Engineers for a riprap project that exceeds 500 feet in length and the fill below the normal high water line exceeds 1 cubic yard per linear foot of riprap.

A copy of the PBR notification form should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) The applicant is required to submit photographs of the entire shoreline area where this activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) Riprap may be utilized only where eroded slopes exceed 3 horizontal feet to 1 vertical foot (approximately 33% slope), or where riprap is used to stabilize an existing stormwater outfall. Where eroded slopes are shallower than 3 horizontal to 1 vertical, vegetation must be used to control erosion.
- (2) Riprap installed on the shoreline of a great pond or open water wetland may not extend higher than 2 feet above the normal high water line. Riprap installed on a river, stream or brook may not extend higher than 2 feet above the normal high water line, or to the elevation of the 100-year flood where mapped by the Federal Emergency Management Agency, whichever is higher. Riprap installed in a coastal area may extend no higher than the elevation of waves expected during coastal storms.
- (3) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (4) New soil may be brought to the site and soil amendments, such as fertilizer or lime, may be used to increase soil fertility provided:
 - (a) Slopes do not exceed 3 horizontal to 1 vertical;
 - (b) Existing vegetation is not permanently removed;
 - (c) Water bars or diversions are used to divert stormwater runoff away from the loam;

- (d) Depth of loam is less than 2 inches;
 - (e) The amendment is worked into the underlying soils;
 - (f) Disturbed areas are immediately mulched and seeded; and
 - (g) Final vegetation consists of native trees and shrubs, or matches existing vegetation immediately adjacent to the treated area.
- (5) Rocks used for riprap may not be obtained from the shoreline (because they help prevent erosion) or below the normal high water line (because they provide habitat for aquatic life).

NOTE: On many slopes, slumping is caused by wave or water motion undercutting the bank. If riprap is placed only at the bottom of the slope, and the upper portions of the bank are graded and revegetated, the cost of the shoreline stabilization project can be reduced.

- (6) The slope of the riprap may not be steeper than 1 horizontal to 1 vertical, nor shallower than 3 horizontal to 1 vertical.
- (7) Riprap must be anchored at the base of the existing bank by placing the bottom row of rock in a trench excavated at least to a depth equal to the height of the largest rock, or the riprap must be pinned to underlying ledge.
- (8) A layer of filter fabric, crushed stone or washed gravel must be placed under the riprap to prevent the washing of soil particles into the water.
- (9) No fill material other than the riprap, crushed stone or washed gravel may be placed below the normal high water line.
- (10) Riprap may not be placed in front of a retaining wall such that it extends further into the water.
- (11) A buffer strip of undisturbed vegetation at least 25 feet wide must be established and maintained along the upland edge of any riprap placed for the protection of agricultural land.
- (12) Design of riprap on river, stream or brook banks must be approved by either a Maine Registered Professional Engineer, the United States Natural Resources Conservation Service, or the local Soil and Water Conservation District. Evidence of this approval or plans stamped by a professional engineer must be submitted along with the Notification Form. With prior written agreement, the DEP may waive this standard for minor riprap activities on small streams.
- (13) When riprap is necessary along a river, stream or brook, it must be combined with tree and shrub plantings to provide bank stabilization, shading of the water and cover for wildlife.

- (14) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
- (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
 - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
 - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet shall be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (16) Work below the high water line of a great pond, river, stream or brook must be done at low water except as required for emergency flood control work.
- (17) All wheeled or tracked equipment that must travel or work in a vegetated coastal wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (18) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.
- (19) Disturbance of vegetation must be avoided if possible. If vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (20) Non-native species may not be planted in disturbed areas.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (2) Riprap. Heavy, irregular-shaped rocks that are fit into place, usually without mortar, on a slope.

- (3) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.

9. Crossings (utility lines, pipes and cables)

A. Applicability

- (1) This section applies to the installation, maintenance and replacement of an overhead utility line across a river, stream or brook excluding outstanding river segments identified in 38 M.R.S.A. Section 480-P.
- (2) This section applies to the installation, maintenance and replacement of a submerged utility line across a coastal wetland, freshwater wetland, great pond, river, stream, or brook excluding outstanding river segments identified in 38 M.R.S.A. Section 480-P.
- (3) This section applies to the installation, maintenance and replacement of an overhead utility line across or adjacent to a coastal wetland, freshwater wetland or great pond provided the line is within the right-of-way of, or adjacent to the path of, an existing traveled way.
- (4) This section does not apply to a submerged utility crossing that is part of a larger project involving multiple crossings of a natural resource or more than one natural resource. Projects consisting of multiple natural resource crossings must obtain an individual permit under the Natural Resources Protection Act.
- (5) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (6) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from NRPA permit requirements under 38 M.R.S.A. Section 480-Q (1) provided that the:
 - (a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
 - (b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
 - (c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.

- (3) Approval for crossing any state-owned (submerged) land must be obtained from the Department of Conservation, Bureau of Parks and Lands, State House Station 22, Augusta, ME 04333.
- (4) A permit may be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving open trench excavation in a waterbody;
 - (b) Any activity in coastal waterways; or
 - (c) Any activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) The applicant is required to submit photographs of the area which will be affected by the activity proposed.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) For any work involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

- (d) All disturbed soils must be permanently stabilized; and
- (c) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed areas.
- (4) If the activity occurs in a coastal wetland, great pond, river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources.
- (5) The trench in and adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.
- (6) Any trench excavation that occurs within a river, stream or brook must be performed either during a period when no water is flowing, or utilize a dry crossing method such as diverting water flow by coffer dam and pumping around the area of excavation. The trench width in any natural resource must be no wider than necessary to install the device.
- (7) The crossing may not obstruct any recreational usage of the water body.
- (8) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (9) All wheeled or tracked equipment that must travel or work in a vegetated wetland must travel and work on mats or platforms in order to protect wetland vegetation.
- (10) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.

- (11) Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.
- (12) Temporary roads constructed of fill are not allowed in the resource except that fill may be used on top of mats or platforms for equipment access.
- (13) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol must not be used where the wood will come in contact with water.
- (14) Blasting in inundated areas is prohibited.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Crossing. Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, as well as maintenance work on these crossings.
- (2) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (3) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (4) Riprap. Heavy, irregular-shaped rocks that are fit into place, usually without mortar, on a slope.
- (5) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.
- (6) Utility lines, pipes and cables. Wires and pipes providing utility services. The term includes telephone and electric wires, gas, oil, water and sewer pipelines, and their support structures, whether public or private.

- (7) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

10. Stream crossings (bridges, culverts and fords)**A. Applicability**

- (1) This section applies to the construction of a bridge span or culvert crossing of a river, stream or brook, and associated accessway construction within 25 feet of the river, stream or brook crossing excluding the following:
 - (a) Crossings of outstanding river segments identified in 38 M.R.S.A. Section 480-P;
 - (b) Crossings of any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office);
 - (c) Crossings of any portion of a river, stream or brook that experiences tidal action; or.
 - (d) Crossings that are part of a larger project, excepting recreation trails, involving multiple crossings of a natural resource or more than one natural resource. Projects consisting of multiple natural resource crossings must obtain an individual permit under the Natural Resources Protection Act.
- (2) This section also applies to the establishment of a permanent stream ford for purposes of timber harvesting, livestock, agriculture and construction and maintenance of a utility line.
- (3) This section applies to crossings associated with recreation trails that are: less than 12 feet wide; utilize a span or bridge, without abutments; and not maintained for highway vehicles. Multiple recreation trail crossings constructed in this manner may be submitted on one PBR notification form as long as the activities are located within one town.
- (4) A stream crossing associated with forest management activities is exempt from the 14 day waiting period required in Section 1(C)(1).
- (5) A stream crossing performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14 day waiting period required in Section 1(C)(1).
- (6) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) Maintenance and repair of a public or private crossing of a river, stream or brook is exempt from the NRPA provided that:
 - (a) Erosion control measures are taken to prevent sedimentation of the water;
 - (b) The crossing does not block fish passage in the water course; and
 - (c) Any replaced culvert is not more than 25% longer than the culvert being replaced and is not longer than 75 feet.
- (3) A permit may be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving impacts (direct and secondary) to freshwater wetlands; or
 - (b) An activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification form should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) For any work involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, notice of approval for the proposed work from the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources must be submitted to the DEP with the notification form.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;

- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) If a perennial watercourse to be crossed is used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
- (3) If the stream to be crossed is a perennial watercourse and has a slope of more than 2%, a bridge or a pipe arch must be used to maintain the natural streambed.
- (4) Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill sideslopes must be stabilized at the completion of the activity.

NOTE: Uncompacted soils or sandy soils that are saturated at the toe of a slope will be unstable at a 1.5 to 1 slope.

- (5) A bridge or culvert must provide an opening with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel or sufficient in size to accommodate 25-year frequency water flows.

NOTE: Stream crossings allowable under this section but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

- (6) Road surfaces must be constructed in a manner to prevent erosion of material into the river, stream or brook.

- (7) Surface water on or adjacent to crossing approaches must be diverted through vegetative filter areas at least 25 feet long to avoid sedimentation of the watercourse. Roadside ditches may not extend to the resource being crossed.

NOTE: Surface water on or adjacent to crossing approaches should be diverted through vegetative filter areas to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter areas should be established in accordance with the following tables:

Average slope of land between exposed mineral soil and normal high water mark (percent)	Width of strip between ditch terminus and normal high water mark (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (8) A stream ford must be lined with crushed stone, blasted ledge, washed stone, gabion blankets or geotextile material for erosion control when the natural stream bed does not consist of ledge or rock.
- (9) A stream ford must allow for fish passage at all times of the year and may not impound water. The fords must also allow for maintenance of normal stream flows.
- (10) Culvert crossings must:
- (a) Be limited to 75 feet in length. This limit may not be exceeded within a half-mile length of the stream or within the length of stream controlled by the applicant, if less;
 - (b) Follow the alignment and grade of the existing stream channel where possible. On perennial streams the culvert's gradient may not exceed 1%;
 - (c) At the outfall, have the bottom of the culvert installed at or below stream bed elevation, except for additional culverts at the same crossing;
 - (d) Where 2 or more culverts are installed, be offset in order to concentrate low flows into the culvert within the natural channel;
 - (e) Be seated on firm ground, or on geotextiles, logs or other materials used to stabilize the ground;

- (f) Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater;
 - (g) Have the soil compacted at least halfway up the side of the culvert; and
 - (h) Have the inlet and outlet ends stabilized by riprap or other means to avoid erosion of material around the culvert.
- (11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may, where necessary, reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (12) Work below the normal high water line must be done during periods of low water level or flow.
- (13) If the activity occurs in a coastal wetland, great pond, river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority and the Department of Marine Resources.
- (14) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
- (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
 - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
 - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (16) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.
- (17) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in a way that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Cross-sectional area. The cross-sectional area of a stream channel is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water marks of the stream channel to the bottom of the channel.
- (2) Crossing. Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, as well as maintenance work on these crossings.
- (3) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (4) Ford. A permanent crossing of a stream utilizing an area of existing, non-erodible substrate of the stream, such as ledge or cobble, or by placing non-erodible material such as stone or geotextile on the stream bottom.
- (5) Perennial watercourse. A river, stream or brook depicted as a solid line on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map.
- (6) Riprap. Heavy, irregular-shaped rocks that are fit into place on a slope, without the use of mortar.
- (7) Used for navigation. Those rivers, streams or brooks used by motorized watercraft.

11. State transportation facilities

A. Applicability

- (1) This section applies to the maintenance, repair, reconstruction, rehabilitation, replacement or minor construction of a State Transportation Facility carried out by, or under the authority of, the Maine Department of Transportation or the Maine Turnpike Authority, including any testing or preconstruction engineering, and associated technical support services.
- (2) This section does not apply to an activity within a coastal sand dune system.

NOTE: The construction of a transportation facility other than roads and associated facilities may be subject to the Storm Water Management Law, 38 M.R.S.A. Section 420-D.

B. Standards

- (1) Photographs of the area to be altered by the activity must be taken before work on the site begins. The photographs must be kept on file and be made available at the request of the DEP.
- (2) The activity must be reviewed by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Atlantic Salmon Authority, and the DEP's Division of Environmental Assessment prior to the notification being filed with the DEP. The activity must be performed according to any recommendations from these authorities.
- (3) The activity must be performed in accordance with erosion control measures conforming with the State of Maine Department of Transportation Standard Specifications for Highways and Bridges Revision of April 1995 and with the Department of Transportation's Best Management Practices for Erosion and Sediment Control, September 1997.

NOTE: Guidance on the use of erosion control best management practices can be obtained from the on site Construction Manager.

- (4) Alignment changes may not exceed a distance of 200 feet between the old and new center lines in any natural resource.
- (5) The activity may not alter more than 300 feet of shoreline (both shores added together) within a mile stretch of any river, stream or brook, including any bridge width or length of culvert.
- (6) The activity may not alter more than 150 feet of shoreline (both shores added together) within a mile stretch of any outstanding river segment identified in 38 M.R.S.A. 480-P, including any bridge width or length of culvert.
- (7) The activity must minimize wetland intrusion. The activity is exempt from the provisions of Chapter 310, the Wetland Protection Rules, if the activity alters less than 15,000 square feet of

natural resources per mile of roadway (centerline measurement) provided that the following impacts are not exceeded within the 15,000 square foot area:

- (a) 1,000 square feet of coastal wetland consisting of salt tolerant vegetation or shellfish habitat; or
- (b) 5,000 square feet of coastal wetland not containing salt tolerant vegetation or shellfish habitat; or
- (c) 1,000 square feet of a great pond.

All other activities must be performed in compliance with all sections of Chapter 310, the Wetland Protection Rules, except 310.2(C), 5(A), 9(1), 9(B) and 9(C).

- (8) The activity may not permanently block any fish passage in any watercourse containing fish. The applicant must improve passage beyond what restriction may already exist unless the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Atlantic Salmon Authority and the DEP's Division of Environmental Assessment concur that the improvement is not necessary.
- (9) Rocks may not be removed from below the normal high water line of any coastal wetland, freshwater wetland, great pond, river, stream or brook except to the minimum extent necessary for completion of work within the limits of construction.
- (10) If work is performed in a river, stream or brook that is less than three feet deep at the time and location of the activity, with the exception of culvert installation, the applicant must divert flow away from the activity while work is in progress.
 - (a) Diversion may be accomplished by the use of stable, inert material. No more than two thirds (2/3) of stream width may be diverted at one time.
 - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream bottom must be restored to its original condition.
 - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.

NOTE: Guidance on the appropriate location of a diversion and materials which should be used for a stream diversion can be obtained from the on site Construction Manager.

- (11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.

- (12) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms.
- (13) Any debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.
- (14) Work below the normal high water line of a great pond, river, stream or brook must be done at low water except for emergency work or work agreed to by the resource agencies listed in paragraph 2 above. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (15) Perimeter controls must be installed before the work starts. Disturbance of natural resources beyond the construction limits shown on the plans is not allowed under this rule.

NOTE: Guidance on the location of construction limits can be obtained from the on site Construction Manager.

- (16) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in a manner that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.
- (17) A temporary road for equipment access must be constructed of crushed stone, blasted ledge, or similar materials that will not cause sedimentation or restrict fish passage. Such roads must be completely removed at the completion of the activity. In addition, any such temporary roads which are in rivers, streams or brooks, must allow for a passage of stormwater flows associated with a 10-year storm.
- (18) Soil may not be disturbed during any period when soils are saturated due to rain or snow melt, except as necessary to protect work in progress or as required for bridge maintenance activities. Areas where soils are saturated (i.e. water drips from the soil when squeezed by hand, or the soil is capable of being rolled into a rod 1/8th inch in diameter that does not crumble) must be immediately mulched if they are disturbed.
- (19) Disturbed soil must be protected within one week from the time it was last actively worked, and prior to any storm event, using temporary or permanent measures such as the placement of riprap, sod, mulch, erosion control blankets, or other comparable measures.
- (20) Hay bale or straw mulch, where used, must be applied at a rate of at least one bale per 500 square feet (1 to 2 tons per acre).

- (21) If mulch is likely to be moved because of steep slopes or wind exposure, it must be anchored with netting, peg and twine, binder or other suitable method and must be maintained until a catch of vegetation is established over the entire disturbed area.
- (22) In addition to the placement of riprap, sod, erosion control blankets or mulch, additional steps must be taken where necessary to prevent sedimentation of the water. Evidence of sedimentation includes visible sheet, rill or gully erosion, discoloration of water by suspended particles and/or slumping of banks. Silt fences, staked hay bales and other sedimentation control measures, where planned for, must be in place prior to the commencement of an activity, but must also be installed whenever necessary to prevent erosion and sedimentation.

NOTE: Guidance on the location and proper installation of erosion control measures can be obtained from the on site Construction Manager.

- (23) Temporary erosion control measures must be maintained and inspected weekly until the site is permanently stabilized with vegetation or other permanent control measures. Erosion control measures must also be inspected immediately prior to and following storms.
- (24) Permanent erosion control measures protecting all disturbed areas must be implemented within 30 days from the time the areas were last actively worked, or for fall and winter activities by the following June 15, except where precluded by the type of activity (e.g. riprap, road surfaces, etc.). The permanent erosion control measures must be maintained.
- (25) The applicant shall immediately take appropriate measures to prevent erosion or sedimentation from occurring or to correct any existing problems, regardless of the time of year.
- (26) Non-native species may not be planted in restored areas.
- (27) Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 et seq.
- (28) Disturbance of vegetation must be avoided, if possible. Where vegetation is disturbed outside of the area covered by any road or structure construction, it must be reestablished immediately upon completion of the activity and must be maintained.
- (29) A vegetated area at least 25 feet wide must be established and maintained between any new stormwater outfall structure and the high water line of any open water body. A velocity reducing structure must be constructed at the outlet of the stormwater outfall that will create sheet flow of stormwater, and prevent erosion of soil within the vegetated buffer. If the 25 foot vegetated buffer is not practicable, the applicant must explain the reason for a lesser setback in writing. Approval from the DEP must be in writing and any recommendations must be incorporated into the activity.

C. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Diversion. A rerouting of a river, stream or brook to a location outside of its established channel.
- (2) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or immediately adjacent to a wetland or water body.
- (3) Floodplain wetlands. Freshwater wetlands that are inundated with flood water during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Agency or other site specific information.
- (4) Riprap. Rocks that are fit into place, usually without mortar, on a slope as defined in the State of Maine, Department of Transportation, Standard Specifications for Highway and Bridges, revision of April 1995.

12. Restoration of natural areas

A. Applicability

- (1) This section applies to the restoration of an altered portion of a coastal wetland, freshwater wetland, great pond, river, stream or brook to its pre-existing natural condition through the removal of fill, structures or debris which is located in, on over, or adjacent to the natural resource.
- (2) This section applies to the removal of non-native species and the planting of natural vegetation in any protected resource.
- (3) This section applies to the retrieval of sand from below the normal high water line for redistribution on an existing adjacent sand beach on a great pond.
- (4) This section applies to the restoration of the natural grade within a dredged area of a freshwater or coastal wetland.
- (5) This section does not apply to:
 - (a) Restoration or replacement of a structure or unnatural condition such as the installation of a dam structure;
 - (b) Conversion of existing natural wetlands to wetland of a different type through flooding, inundation or other means;
 - (c) Dredging of silt, sand or soil materials which have been naturally deposited from a great pond, river, stream or brook, coastal wetland or freshwater wetland except that eroded sand may be retrieved from a great pond for redistribution on an existing adjacent sand beach;
 - (d) Mining of gravel or other mineral materials from a river, stream, or brook;
 - (e) Replacement of eroded soil material in areas above, below and adjacent to the normal high water mark of a great pond, river, stream or brook, freshwater wetland, or coastal wetland, except that sand may be regraded on an existing sand beach;
 - (f) Removal of a man-made dam structure;
 - (g) Draining of a freshwater wetland to convert an area to upland; or
 - (h) An activity occurring within a coastal sand dune system.

- (6) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.
- (2) A permit may be required from the US Army Corps of Engineers for the following types of projects:
 - (a) Any activity involving impacts (direct and secondary) to freshwater wetlands;
 - (b) Any activity within a coastal wetland;
 - (c) Any activity within an open water area; or
 - (d) Any activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification form should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) The applicant is required to submit photographs of the area in which this activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) For an activity occurring in tidal waters, notice of approval of timing from the Department of Marine Resources must be submitted to the DEP with the notification form.
- (4) For an activity involving the removal of a beaver dam, notice of approval for the removal from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the proposed resource:

- (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed areas.
- (4) Only material that has been placed in a natural resource by persons may be removed from these waterbodies except for debris deposited within the previous 12 calendar months, and sand that will be regraded onto existing adjacent sand beaches.
- (5) Sand may be regraded from below the normal high water line, but machinery may not operate in the water. Equipment operating on shore may reach into the water with a bucket or similar extension. Areas covered by vegetation, either aquatic or terrestrial, may not be disturbed during any beach regrading.
- (6) Any activity involving the regrading of an existing sand beach must include the installation of permanent erosion control devices, such as water bars and diversion ditches, that prevent future erosion of the sand from upland runoff. The erosion control devices must be installed prior to the regrading of the beach.
- (7) Vegetation and soil material used in restoring wetland areas must be similar to the vegetation and soil materials occurring under pre-existing natural conditions.
- (8) No fill other than soil material used to restore natural elevations within a dredged area of a coastal or freshwater wetland may be placed in or adjacent to a natural resource. Sand may not be brought in from off-site to replenish an existing beach.

NOTE: Erosion of sand from beaches may be due to wave action or the action of overland water flows. Contact the DEP, the local Soil and Water Conservation District, or the local lake association for assistance with identifying sources of beach erosion.

- (9) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.
- (10) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (11) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales, silt fence or mulch must be used, where necessary, to prevent sedimentation.
- (12) If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Dam. Any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (2) Dredge. To move or remove, by digging, scooping, or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (3) Fill. a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a wetland or water body.
- (4) Debris. Non-mineral materials (including but not limited to wood, brush or flotsam) deposited by wind, wave action, flooding or wild animals within the last 12 months. This term includes beaver dams, but does not include beaver or muskrat houses or nests of wild birds such as wading birds or waterfowl.
- (5) Restoration. An activity returning a great pond, coastal wetland, freshwater wetland, river, stream or brook from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or functions.
- (6) Structure. Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground. Examples of structures include buildings, utility lines and roads.

- (7) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

13. Habitat creation or enhancement and water quality improvement activities**A. Applicability**

(1) This section applies to an alteration in or adjacent to a great pond, river, stream or brook, coastal wetland and a freshwater wetland by a public natural resource agency. This rule also applies to an alteration in the same types of resources by a public utility, the Department of Transportation, owner of a federally licensed hydropower project, a conservation group, or a municipality in conjunction with and under the supervision of a public natural resource agency, exclusively for the purpose of:

- (a) Creating or enhancing habitat for fisheries or wildlife; or
- (b) A water quality improvement project.

These activities may include but are not limited to: fishway installation; the construction of artificial reefs; removal, maintenance, installation or modification of dam structures; and the construction and maintenance of nutrient retention structures.

- (2) This section applies to a landfill closure activity approved by the DEP.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

- (1) The applicant is required to submit photographs of the area in which this activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) Excluding landfill closures, if an activity is to be performed by a public utility, conservation group, municipality or the Maine Department of Transportation, certification from a public natural resource agency that the proposed activity will be done in conjunction with, or under the supervision of, the agency must be submitted with the notification form.

C. Standards

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

- (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
- (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
- (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence and hay bale installation and site stabilization are available from the DEP.

- (2) Disturbance of vegetation must be avoided if possible. Where vegetation is disturbed outside of the area covered by any structures or filling associated with this activity, it must be reestablished immediately upon completion of the activity and must be maintained.
- (3) Non-native wetland plants may not be planted in disturbed wetland areas.
- (4) All debris or excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales, silt fence, or mulch must be used where necessary to prevent sedimentation. Any debris generated during the activity must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq.
- (5) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (6) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used provided it is cured on dry land in such a manner as to expose all surfaces to the air for at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where the wood will come in contact with water.
- (7) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.

- (8) Work below the high water line of a great pond, river, stream or brook shall be done at low water, except as required for emergency flood control work. Measures, such as a silt boom or staked fencing, must be employed to reduce and isolate turbidity.
- (9) All wheeled or tracked equipment that must travel or work in a vegetated coastal wetland must travel and work on mats or platforms in order to protect wetland vegetation.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Dam. Any man made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, that impounds or diverts a river, stream or brook or great pond.
- (2) Public natural resources agency. The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, the Atlantic Sea Run Salmon Commission, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers and County Soil and Water Conservation Districts.
- (3) Water quality improvement project. An activity designed exclusively to maintain or enhance water quality of a freshwater wetland, great pond or river, stream, brook or a coastal wetland. Examples include but are not limited to: nutrient retention basins, water level manipulation and rerouting of drainage ways.
- (4) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites communis*) and purple loosestrife (*Lythrum salicaria*).

14. Piers, wharves, pilings and haulouts**A. Applicability**

- (1) This section applies to the construction or expansion of a pile supported pier or wharf, the installation of pilings, or the construction of a haulout in a coastal wetland. This section also applies to the construction of roads, walkways, or other access ways to the pier, wharf or haulout.
- (2) This section applies to the construction of a structure for a water dependent use (e.g. bait sheds) on a pile supported pier or wharf that meets the criteria of subsection B below.
- (3) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (4) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

- (5) This section does not apply to an activity that is located in an area containing significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife.

B. Submissions

- (1) The applicant is required to submit photographs of the area in which this activity is proposed and a project design plan for the proposed activity if it is a pier, wharf or haulout.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) The applicant must submit a letter of permission by the abutting or other controlling property owner when new structures constructed under this section do not meet the setback requirements of Standard #9 below.

C. Standards

- (1) When the PBR notification is submitted to the DEP, the applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands (State House Station #22 Augusta, Maine 04333),

to determine whether a submerged lands lease or easement is necessary. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

NOTE: Processing of a request for a lease or easement may require several weeks of review.

- (2) The applicant shall submit a copy of the project design plan along with a copy of the notification form to the United States Army Corps of Engineers (Maine Project Office, RR 2, Box 1855, Manchester, Maine 04351) at the time the notification form is submitted to the DEP. The Corps will contact the applicant if additional information is required for his or her application process. Construction may not begin until a permit from the Corps is obtained.
- (3) A pier, wharf or haulout may not be located over salt marsh or other emergent marsh vegetation that is more than 10 feet in width, measured perpendicularly to shore. Any portion of a pier or wharf that is over salt marsh or other emergent marsh vegetation must be elevated to a minimum height equal to the width of the pier (e.g. the bottom of the decking for a six foot wide pier must be at least 6 feet above the underlying substrate.)
- (4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the proposed resource:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence and hay bale installation and site stabilization are available from the DEP.

- (5) A commercial or public pier or wharf may not exceed 12 feet in width as measured parallel to the shoreline, and must be limited to the minimum length necessary to provide access to boats intended to use the facility.

- (6) A non-commercial, private pier may not have a width of over 6 feet as measured parallel to the shoreline and may not extend beyond the mean low water line. A temporary ramp and float may be attached to the pier or wharf and may extend below the mean low water line.
- (7) Only one pier or wharf and only one haulout are allowed on any single lot with shore frontage or area under common ownership with shore frontage.
- (8) A structure may not extend across more than 25 percent of any channel at mean low water. A structures may not extend into a designated federal channel.
- (9) New piers, wharves and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high water line and not owned or controlled by the applicant unless a letter of permission is provided from the abutting owner or other controlling property owner.
- (10) A haulout must be pinned to the underlying ledge or must be supported on piles.
- (11) A haulout may not extend beyond the low water line.
- (12) A haulout must be constructed of timbers no more than 8 inches in width. Cross braces may not be set closer than 16 inches on center. Timbers may not be closer than 4 feet apart. The total width of the haulout may not exceed 12 feet. No fill may be added to the wetland as part of the haulout construction.
- (13) Any access way to a pier, wharf or haulout must have a stabilized surface that will not erode. In addition, any new access way must be less than 10 feet in width and must be constructed entirely on upland areas.
- (14) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.
- (15) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water or, where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Emergent marsh vegetation. Plants that are erect, rooted and herbaceous, and that may be temporarily to permanently flooded at the base, but do not tolerate prolonged inundation of the entire plant; e.g. cattails, saltmarsh cordgrass.

- (2) Haulout. A structure made of wood and used as a ramp to aid in the removal of boats or floating docks from the water; also known as a skidway.
- (3) Permanent structure. Permanent structure means any structure constructed or erected with a fixed location, or attached to a structure with a fixed location in, on or in the ground within a fragile mountain area, or having a fixed location, in on or over the water for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings (38 M.R.S.A. Section 480-B(10)).
- (4) Project design plan. A detailed plan of the proposed activity indicating all dimensions (width, height, length) relative to the mean low water mark including any appurtenant structures that may be seasonal in nature.
- (5) Water dependent use. A use which cannot occur without access to surface water. Examples of uses that are water dependent include, but are not limited to, piers, boat ramps, marine railways, lobster pounds marinas and peat mining. Examples of uses which are not water dependent include, but are not limited to, boat storage, residential dwellings, hotels, motels, restaurants, parking lots, retail facilities and offices.

15. Public boat ramps**A. Applicability**

- (1) This section applies to the construction of a new, or the replacement of an existing, public boat ramp or carry-in launch area, including associated parking and accessways, in or adjacent to a protected natural resource by a public natural resource agency, municipality, or owners of a federally licensed hydropower project within the resource affected by the hydropower project. This section does not apply if a portion of the ramp or related facilities is located in, on or over emergent marsh vegetation or intertidal mudflat.
- (2) This section applies to the construction of up to 2 launch lanes at a facility provided no more than 2 lanes exist or will exist at the completion of the activity.

NOTE: A permit may be required from the US Army Corps of Engineers for the following types of projects:

- (a) Any activity involving open trench excavation in a waterbody;
- (b) Any activity in coastal waterways; or
- (c) Any activity within a river, stream or brook between October 2 and July 14.

A copy of the permit by rule notification form should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) The applicants is required to submit photographs of the area in which this activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) The project design plan, erosion control plan and a request for review for an activity on great ponds classified as GPA under 38 M.R.S.A. Section 465-A must be submitted to the DEP's Division of Watershed Management (DWM) prior to submitting the notification form to the DEP. A certification from DWM must be obtained and must be included with the notification form, along with final project plans and the erosion control plan, when it is submitted to the DEP.
- (4) The applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands (State House

Station #22 Augusta, Maine 04333) at the time the notification form is submitted to the DEP. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

NOTE: Processing of a request for a lease or easement may require several weeks of review by the Bureau of Public Lands.

- (5) If the proposed activity is located within a coastal wetland area, the applicant shall submit, along with the notification form, a letter from both the Department of Inland Fisheries and Wildlife and the Department of Marine Resources that describes times of the year in which the construction of the boat ramp may occur.
- (6) If the proposed activity is located within a freshwater wetland, great pond, river, stream or brook, the applicant shall submit, along with the notification form, a letter from the Department of Inland Fisheries and Wildlife that describes times of the year in which the construction of the boat ramp may occur.

C. Standards

- (1) The erosion control plan must be followed. Erosion of soil or fill material from disturbed areas into the resource must be prevented. The following measures must be taken:
 - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence or hay bale installation and site stabilization are available from the DEP.

- (2) A hard-surfaced launch must be used where boats will be launched from trailers, and must meet the following specifications:

- (a) The underwater portions of the ramp, at the time of construction, must be constructed of reinforced precast concrete planks, panels or slabs;
 - (b) The portion of the ramp used by the towing vehicle may not have a slope that exceeds 15%; the portion of the ramp used by the trailer only may not have a slope that exceeds 20%;
 - (c) The width of the hard surfaced launch lane(s) may not exceed 20 feet as measured parallel to shore;
 - (d) The upper most 6 inches of the base must consist of crushed rock or crushed or screened gravel having 5% or less passing a 200 mesh sieve; and
 - (e) Fill slopes at or below the normal high water line must be protected with riprap. Riprap installation must meet the standards for riprap in PBR Section 8, "Shoreline stabilization".
- (3) An additional area of up to 8 feet wide as measured parallel to shore may be constructed using bituminous pavement, precast concrete planks, panels or slabs to support docking systems.
- (4) A carry-in launch area for small boats must:
- (a) Consist of gravel, rock, sand, vegetation, or other erosion resistant materials;
 - (b) Have a grade not exceeding 18%; and
 - (c) Be Limited, below the low water line, to constructing a path up to 6 feet wide, measured parallel to shore, consisting of cobble, rock or concrete planks, to access deeper water to float watercraft.
- (5) A vegetated buffer zone at least 25 feet in width must be maintained between any new or expanded parking area and the waterbody.
- (6) A parking area or access road may not be located in a protected natural resource, except that an access roadway may cross a stream if the requirements of PBR Section 10 "Stream crossings" are met.
- (7) Any new or expanded parking area or roadway must divert stormwater runoff away from the ramp to an area where it may infiltrate into the ground before reaching the waterbody.
- (8) Machinery may operate below the water line only when necessary to excavate or place material below the existing water level and must travel and operate on temporary mats or portions of the ramp that have been constructed.

- (9) Timing of the activity must conform to the recommendations of biologists from the Department of Inland Fisheries and Wildlife or the Department of Marine Resources, as appropriate, as described in letters submitted along with the notification form.
- (10) Any debris generated during the work must be prevented from washing downstream and must be removed from the wetland or water body. Disposal of debris must be in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A Section 1301 et seq.
- (11) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water or, where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.
- (12) The use of untreated lumber is preferred. Lumber pressure-treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol shall not be used where it will contact water.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Emergent marsh vegetation. Plants that are erect, rooted and herbaceous, and that may be temporarily to permanently flooded at the base, but do not tolerate prolonged inundation of the entire plant; (e.g. cattails, saltmarsh cordgrass).
- (2) Public natural resource agency. The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, the Atlantic Sea Run Salmon Commission, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service and County Soil and Water Conservation Districts.
- (3) Project design plan. A detailed plan of the proposed activity indicating all dimensions (width, height, length) relative to the mean low water mark, and including any appurtenant structures that may be seasonal in nature.

16. Activities in coastal sand dunes**A. Applicability**

(1) This section applies to the following activities in coastal sand dune systems:

- (a) Replacement of an existing seawall;
- (b) Dune restoration or construction;
- (c) Beach nourishment;
- (d) Construction of a walkway, driveway, or a deck in a back dune area that are classified as A, B or C flood hazard zones;
- (e) New development or an addition to existing development in a back dune, non-flood (C zone) area of coastal sand dune system that is not expected to be damaged due to shoreline change within 100 years based on historic and projected trends;
- (f) Construction of open fences; and

PBR applications are reviewed on a case by case basis to determine the concern for damage due to shoreline change. In an area where concern for damage due to shoreline change is identified, the applicant is required to file for a Natural Resources Protection Act Permit, and is encouraged to contact the DEP for a pre-application meeting.

- (2) This section does not apply to the construction of an addition to an existing structure in an A or B flood hazard zone or to any structures in a V flood hazard zones.
- (3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

- (1) The applicant is required to submit photographs of the area in which the activity is proposed.
- (2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labelled with the applicant's name and the town in which the activity took place.
- (3) The following information must also be submitted with the notification form:

- (a) A site plan showing the project location and square footage of the property, buildings and development (both existing and proposed (see definition of Development in Section D);
- (b) A copy of the Flood Insurance Rate Map (FIRM map) for the lot, with the project site accurately located on the map;
- (c) A copy of the coastal sand dune map of the area with the lot and any building site accurately located on the map;

NOTE: Maps are available for review at the town offices of most coastal communities and at DEP regional offices, and are available for purchase from the Maine Geological Survey, State House Station 22, Augusta, ME 04333

- (d) For seawall replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall and the elevation of the wall(s) referenced to National Geodetic Vertical Datum (NGVD). The plan must be signed and dated by the person responsible for preparing the drawing, and
- (e) If moving sand in an area seaward of the frontal dune between April 1 and September 1, a copy of the written approval to proceed from the Department of Inland Fisheries and Wildlife.

C. Standards

- (1) Native vegetation must be retained on the lot. No fill may be placed on the site other than that required for the approved dune restoration or construction, beach nourishment, foundation backfill and driveway or walkway construction. Foundation backfill and sand dune restoration and construction must utilize sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics. No sand may be moved seaward of the frontal dune between April 1 and September 1, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.
- (2) No more than 40% of the lot may be covered by structures, driveways, walkways, parking areas or waste disposal systems, including land area previously developed; nor may the total area to be covered by buildings exceed 20% of the lot, including existing buildings. Land area within the V-zone may not be included as part of a lot for the purposes of this section.
- (3) Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased.
- (4) Where buildings that are existing or did exist within one year of application exceed 20% of the total lot area, the percentage of area covered by buildings may not be increased.

- (5) No additional land may be covered by development or buildings as a result of lot subdivisions created after January 4, 1988.
- (6) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2, "Soil disturbance".
- (7) Building or building additions may not cause a total structure to be greater than 35 feet in height or cover a ground area greater than 2500 square feet.
- (8) A new structure or an addition to an existing structure must be constructed to withstand wind from a storm having a 50-year recurrence interval as provided in standards published by the Federal Emergency Management Agency in the Coastal Construction Manual, Chapter 4 and Appendices A and B, dated February 1, 1986.
- (9) A building may not be constructed so that any part of the building extends seaward of a line drawn between the seaward most point of buildings on adjacent properties if the construction would significantly obstruct the view from an adjacent building.
- (10) Disturbance of vegetation must be avoided. Any areas of natural dune vegetation that are disturbed must be restored as quickly as possible. Natural dune vegetation includes American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.
- (11) An activity involving dune restoration or dune construction must be performed between March 1 and April 1 or October 1 and November 15. Beach grass must be planted immediately after construction. Beach grass must be planted with 3 culms per hole. The holes must be spaced 18 inches apart. The planted beach grass must be protected from pedestrian traffic until the beach grass is well established. The density of the growing stand of beach grass must be at least 40 plants per 100 square feet.
- (12) Dune restoration/construction and beach nourishment projects must use sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.
- (13) A dune restoration or dune construction activity must minimize damage to existing dune vegetation and must follow the configuration and alignment of adjacent dunes as closely as possible. No sand or other materials may be placed below the normal high tide line.
- (14) The replacement of a seawall may not increase the height, length or thickness dimensions of a seawall beyond that which legally existed within 24 months of submission of the notification form. The replaced seawall may not be significantly different in construction from the one that previously existed.
- (15) Any private walkway must be 4 feet or less in width. Any public walkway must be 10 feet in width. Walkways must allow for sand movement and may not have a significant impact on

vegetation outside of the footprint of the walkway. No portion of the walkway may be located in the V flood hazard zone.

- (16) Any fence constructed in A, B, or V flood hazard zones, or any fence constructed on or seaward of the frontal dune must be an open fence that allows water, wind or sand to move through it easily. Fences may not be placed on the beach face unless the fence is used to keep pedestrian traffic off of dune vegetation or away from shore bird nesting or breeding areas.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) A-zone. That land area of special flood hazard subject to a one percent or greater chance of flooding in any given year.

NOTE: These areas will be designated as Zones A, AI-30, or AO on a community's Flood Insurance Rate Map, and the depth of flooding will usually be shown on the map. In cases where these maps are not available, no longer apply to a specific site because of significant shoreline changes, or show unnumbered A-zones, the base flood elevation must be determined using the best available data. The base flood, also known as the 100 year flood, is the flood with a one percent chance of occurring in any given year. Flood elevations must be given relative to NGVD, which is a standard elevation (0.00 feet) from which land measurements are derived. Procedures for determining flood elevations should conform with the procedures established by the Federal Emergency Management Agency (FEMA) in developing the Flood Insurance Rate Maps. Computer analysis is not required.

- (2) American beach grass. A grass species native to sand dune systems with the scientific name *Ammophila breviligulata*.
- (3) B-zone. Areas between the special flood hazard areas (A-zones and V-zones) and the limits of the 500 year flood. This zone also includes areas of 100 year shallow flooding where water depths are less than one foot.
- (4) Back dunes. Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetland adjacent to the sand dune system.

NOTE: In locations of extreme dune erosion where the frontal dune is completely eroded, back dunes may become frontal dunes.

- (5) Beach face. The sloping portion of a beach that is below the high tide limit, and is usually exposed to wave action.
- (6) Beach nourishment. Artificially adding sand to the beach face.

- (7) Berm. The flat or gently sloping area between the high tide limit and frontal dune. A berm is formed by deposition of sand that has been transported to shore by waves and along shore by waves, wind and long shore currents.
- (8) C-zone. Areas of minimal flooding above the level of the 100 year flood as mapped by the Federal Emergency Management Agency.
- (9) Development. The alteration of property for human-related use including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, and any other appurtenant facilities, but excluding temporary structures and open decks exempted by the Coastal Sand Dune Rules (06-096 CMR 355).
- (10) FEMA. The Federal Emergency Management Agency of the United States Government. This agency administers the National Flood Insurance Program and the Flood Insurance Rate Maps.
- (11) Frontal dune. The frontal dune is the area consisting of the most seaward ridge of sand and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with natural flora and may consist in part or in whole, of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.
- (12) Land adjacent to a protected natural resource. Any land area within 100 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.
- (13) Lot. A piece of land measured and marked out by metes and bounds or by some other approved surveying technique.
- (14) National geodetic vertical datum (NGVD). The base (0.00) elevation point from which land measurements are derived. This elevation was established in 1929 and was formerly called "sea level datum of 1929" or "mean sea level."
- (15) Structure. Something constructed, including, but not limited to, buildings, swimming pools and fences, but not including seawalls, driveways, parking areas and natural features, such as frontal dunes.
- (16) V-zone. Areas below the 100 year flood elevation that experience wave action during a 100-year flood condition as mapped by the Federal Emergency Management Agency.

17. Transfers and permit extensions**A. Applicability**

- (1) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be transferred from the permittee to the applicant when the permitted project changes ownership.
- (2) This section allows an individual permit, general permit or tier review approval issued under the Natural Resources Protection Act to be extended one time provided the approved activity has not begun and the permit has not expired. This section does not apply to an extension request for a permit previously extended under this chapter.

B. Submissions

- (1) For a transfer, the applicant must submit an affidavit attesting to the fact that he or she has received, read, understand and will comply with the terms of the DEP Order(s) and conditions of approval for the activity.
- (2) For a transfer, the applicant must submit a copy of the order(s) to be transferred as well as a copy of documents establishing proof of ownership of the property on which the activity is located or sufficient title, right or interest to complete the activity in accordance with the requirements of the permit and the NRPA.
- (3) For a transfer, the original permittee must submit a statement attesting that he or she agrees to the transfer of his or her permit to the applicant.
- (4) For a transfer of a project that requires compensation, the applicant must submit documentation that demonstrates sufficient expertise and financial resources to complete the approved compensation work, including subsequent monitoring and corrective actions.
- (5) For permit extensions, a copy of the order(s) to be extended shall be submitted to the Department along with a written reason for the extension request.

C. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Affidavit. A written declaration made under oath before a notary public.
- (2) Extension. A DEP approval to extend an unexpired permit. An extension is valid for 2 years.

18. Maintenance dredging permit renewal**A. Applicability**

- (1) This section applies to the renewal of an individual permit issued by the DEP for maintenance dredging in a coastal wetland, great pond and river, stream or brook provided that:
 - (a) The area to be dredged is located in an area that was dredged within the last ten years;
 - (b) The permit to be renewed was an individual Natural Resources Protection Act permit. If the most recent dredge was permitted under a PBR, this section does not apply;
 - (c) The area to be dredged is not located in or within 250 feet of an area identified as significant wildlife habitat by the Department of Inland Fisheries and Wildlife;

NOTE: Contact the nearest regional office of the Maine Department of Inland Fisheries and Wildlife for more information

- (d) Less than 50,000 cubic yards will be dredged.
- (2) This section does not apply to the renewal of a permit issued by the DEP for gravel mining in any protected natural resource.

NOTE:

- (1) Displacement or bulldozing of sediment within a lobster pound does not require a Natural Resources Protection Act permit provided that the sediment is not removed from the area inundated as a result of the impoundment, 38 M.R.S.A. Section 480-Q(19).
- (2) Any activity involving dredging may require a permit from the US Army Corps of Engineers. A copy of the PBR notification should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, RR 2 Box 1855, Manchester, ME 04351).

B. Submissions

- (1) A copy of the permit issued for the most recent dredging must be submitted to the DEP with the notification form.
- (2) For a dredge activity in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.

C. Standards

- (1) The dimensions of the area proposed to be dredged may not exceed previously approved dimensions and dredging must be conducted in the same location.

- (2) All conditions previously attached to the original permit are incorporated into the permit by rule unless otherwise stated by the DEP in writing.
- (3) For a dredge activity in tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.
- (4) Any debris or dredged material generated during the activity may not be disposed of in any protected natural resource unless otherwise allowed in this chapter and the disposal conforms with the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 et seq.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) Dredge. To move or remove, by digging scooping or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.
- (2) Dredge spoils. Sand, silt, mud, gravel rock or other sediment or material that is moved from coastal wetlands, great ponds or rivers, streams or brooks.

AUTHORITY: 38 M.R.S.A., Section 480-H & 341-D(1)

EFFECTIVE DATE: February 15, 1989
Amended: March 23, 1991
Amended: April 11, 1992
Amended: May 19, 1992
Amended: April 21, 1995
Amended: May 14, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

NON-SUBSTANTIVE CORRECTIONS: May 12, 1997 - punctuation,
formatting, comparison with May 14, 1995 amendment.

EFFECTIVE DATE: Amended: June 1, 1999